UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MSG Arena, LLC and MSG Sports & Entertainment, LLC, *Plaintiffs*, v. TDG Brands, Inc.; TDG and Associates, LLC; TDG, Inc.; TDG Holdings LLC; Mix 1 Life, Inc. d/b/a Mixx Brands Inc.; BrandMark Products, Inc.; Steven Delaportas a/k/a/ Stephen Dellaportas; and Jerry Delaportas a/k/a Jerry Dellaportas, *Defendants*.	No. _____________

COMPLAINT

Plaintiffs MSG Arena, LLC ("MSG") and MSG Sports & Entertainment, LLC ("MSG S&E") allege as follows for their complaint against Defendants TDG Brands, Inc., TDG and Associates, LLC, TDG, Inc., and TDG Holdings LLC (the "TDG Defendants"); Mix 1 Life, Inc. d/b/a Mixx Brands Inc. and BrandMark Products, Inc. (the "MIXX Defendants"); and Steven Delaportas a/k/a/ Stephen Dellaportas and Jerry Delaportas a/k/a Jerry Dellaportas (the "Individual Defendants") (all defendants, collectively, "Defendants"):

PRELIMINARY STATEMENT

1. Madison Square Garden is one of the most iconic and recognizable names in the world of sports. Defendants are brand consultants and purveyors of snack products known as "Jim Beam Nuts."

2. MSG and the TDG Defendants are parties to a written sponsorship agreement that gave the TDG Defendants invaluable benefits to help market and promote their Jim Beam Nuts products. As corporate sponsors, the TDG Defendants obtained: the right to advertise Jim Beam

Nuts as the Garden's "official" nuts; commercial spots and advertisements for the products both inside and outside the Madison Square Garden arena; the opportunity to distribute samples and coupons related to the products at arena events; and the right to supply the products to the arena for sale to the consuming public.

3. The TDG Defendants have breached their obligations to MSG under the parties' marketing agreement. Although the TDG Defendants promised to pay sponsorship fees to MSG in regular installments throughout the agreement's term, the TDG Defendants have failed to pay the fees due and owing to MSG. The TDG Defendants also failed to deliver to MSG any of the Jim Beam Nuts snack products that MSG ordered to sell in the arena.

4. The TDG Defendants and the related MIXX Defendants have also infringed MSG's trademarks and provided false and misleading information about MSG to the general public and potential investors in an unlawful effort to cash in on MSG's goodwill. These Defendants have falsely implied on their website and in investor presentations that (1) MSG is their client and has retained them as branding consultants to help promote the MSG brand and (2) they have a successful commercial relationship with MSG and supply their Jim Beam Nuts products to Madison Square Garden. None of that is true. MSG has never retained any of the Defendants as consultants and has never looked to Defendants for any branding advice, and the TDG Defendants have defaulted on all of their contractual obligations to MSG and have failed to deliver any snack products to Madison Square Garden.

5. The MIXX Defendants and Individual Defendants are liable under the TDG Defendants' sponsorship agreement as alter egos and/or successor entities to the TDG Defendants. The Individual Defendants are liable for the infringing acts of both the TDG Defendants and the MIXX Defendants because the Individual Defendants are the owners,

officers, directors, and/or employees of these companies and they directed or authorized the companies' infringing acts.

PARTIES

6. Plaintiffs are each limited liability companies engaged in the business of conducting and/or hosting sports and entertainment events.

7. Upon information and belief, Defendants TDG Brands, Inc., TDG and Associates, LLC, TDG, Inc., TDG Holdings LLC, Mix 1 Life, Inc. d/b/a Mixx Brands Inc. ("Mix 1 Life"), and BrandMark Products, Inc. ("BrandMark") are interchangeable companies based in Scottsdale, Arizona, which are under common control and are engaged in the same business of brand management and consulting.

8. Upon information and belief, at all relevant times, Defendant Steven Delaportas a/k/a Stephen Dellaportas was an officer, director, owner, and/or employee of each of the TDG Defendants and the MIXX Defendants.

9. Upon information and belief, Defendant Jerry Delaportas a/k/a Jerry Dellaportas is the son of Defendant Steven Delaportas. At all relevant times, Jerry Delaportas was an officer, director, owner, and/or employee of each of the TDG Defendants and the MIXX Defendants.

JURISDICTION AND VENUE

10. This is an action for, among other things, trademark infringement arising under the Lanham Act, 15 U.S.C. § 1051, *et seq*. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338, and 15 U.S.C. §§ 1116 and 1121. This Court has supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367.

11. Venue in this District is appropriate pursuant to 28 U.S.C. § 1391(b)(2) and the forum-selection clause in the Agreement, as defined below.

FACTUAL ALLEGATIONS

A. TDG's Breaches of the Parties' Agreement

12. On April 19, 2016, MSG and a company identified as "TDG" entered into a sponsorship agreement (the "Agreement") for a term commencing on May 15, 2016 and ending on April 30, 2019.

13. Pursuant to the Agreement, MSG provided TDG with valuable sponsorship benefits for TDG's promotion of Jim Beam Nuts. Among other things, TDG obtained (a) the right to advertise Jim Beam Nuts as the "Official Peanut/Almond/Cashew/Mixed Nuts" of the Madison Square Garden arena; (b) the opportunity to distribute samples of, or coupons for, these snack products at arena events; (c) the right to advertise the products on screen advertisements inside the arena; (d) commercial spots for the products on the prominent Seventh Avenue marquee of the arena; and (e) integration of the products into the arena's concessions, meaning that MSG would purchase the products from TDG and sell them inside the arena. TDG also obtained the right to use the logos and marks of the arena for the promotion of the Jim Beam Nuts brand, subject to MSG's approval of each use.

14. In return, TDG was obligated to pay MSG $551,688 in sponsorship fees on the following schedule:

a. two installments of $87,500 due by June 15, 2016 and September 1, 2016;

b. two installments of $91,875 due by March 1, 2017 and September 1, 2017; and

c. two installments of $96,469 due by March 1, 2018 and September 1, 2018.

15. TDG has failed to pay MSG any of the sponsorship fees currently due and owing under the Agreement, which total $266,875 as of March 1, 2017, plus contractual interest at the rate of 15% per annum. TDG also remains obligated to pay MSG an additional $284,813 in installments between September 1, 2017 and September 1, 2018, as set forth above.

16. TDG also agreed in the Agreement that it would supply MSG with all Jim Beam Nuts products necessary to fulfill MSG's needs as and when required by MSG in good faith. Although MSG placed an order for Jim Beam Nuts products, and TDG repeatedly assured MSG that the products would be delivered, TDG failed to deliver any products to MSG.

17. Finally, as explained further below, TDG used the logos and marks of the Madison Square Garden arena in promotional, marketing, and/or advertising material without obtaining MSG's prior approval, and for unauthorized and misleading purposes, all in violation of the Agreement.

B. Each of the TDG Defendants is Liable under the Agreement

18. Each of the TDG Defendants is liable for TDG's breaches of the Agreement as alter egos or instrumentalities of the others.

19. At all relevant times in their day-to-day operations, the TDG Defendants did not distinguish between themselves, such that a person doing business with one or more of them could reasonably assume that they were one company. Each of the TDG Defendants is named some variant of "TDG"; all of the TDG Defendants shared office space and/or mailing addresses; the email signature blocks of Steven Delaportas and other "TDG" employees contain a link to a website: www.tdg4.com (the "TDG Website"), which refers generically to "TDG" or "the TDG Company"; and, as set forth above, the Agreement was signed on behalf of "TDG."

20. At all relevant times, the TDG Defendants had overlapping owners, officers, directors, and employees, namely Steven and Jerry Delaportas.

21. On information and belief, the TDG Defendants and the Individual Defendants have, as applicable, also failed to follow requisite corporate formalities, have intermingled funds, and have financed and/or paid the salaries and other expenses of each other.

22. The TDG Defendants have a history of treating themselves as interchangeable entities in order to frustrate creditors. For example:

a. In 2006, Steven Delaportas pled guilty to a felony count of being an accessory after the fact to concealment in bankruptcy, and was sentenced to probation and to pay restitution. *See United States v. Steven J. Delaportas*, No. 2:05-cr-00001 (D. Ariz. May 5, 2006), ECF Nos. 94, 154, 159. In 2012, the government served a writ of garnishment on TDG and Associates, LLC. Even though Steven Delaportas was the LLC's manager, he (and the LLC) claimed that he had not been an employee of the LLC and that the government should instead pursue TDG, Inc. *See* ECF Nos. 176, 180, 181. After the district court held the LLC in contempt and ordered that arrest warrants issue for Steven Delaportas and Jerry Delaportas, TDG and Associates, LLC made payments toward Steven Delaportas's restitution judgment. *See* ECF Nos. 182 and 195.

b. TDG Brands, Inc. is currently a defendant in *Superior Nut & Candy Co., Inc. v. TDG Brands, Inc.*, No. 16-cv-10650 (N.D. Ill. Nov. 16, 2016). The plaintiff in that action has sued the company for non-payment for goods. The plaintiff's contract was with TDG and Associates, LLC, but the plaintiff received purchase orders from TDG Brands, Inc. *See* ECF No. 2-2; ECF No. 2-4. TDG Brands, Inc. also moved to transfer the action, relying on the forum-selection clause in the contract between the plaintiff and TDG and Associates, LLC. *See* ECF No. 2-4; ECF No. 6.

23. Steven Delaportas has committed fraud with other companies as well, again to frustrate creditors or defraud innocent parties:

a. In 2005, a plaintiff sued Steven Delaportas and certain of his other companies for accepting and reselling over $2 million worth of food products and failing to pay the plaintiff his share of the proceeds. *See Whitehall Specialties, Inc. v. Delaportas*, No. 04-C-0436-C, 2005 WL 752234, at *1 (W.D. Wis. Mar. 25, 2005). The district court found that Steven Delaportas lied to the plaintiff and the court and violated court orders to avoid turning over discovery materials regarding his companies' finances. Among other things, the court also noted that Delaportas "admit[ted] that he set up" one of his companies "essentially to 'front'" for another company that "was blackballed in the industry." *Whitehall Specialties, Inc. v. Delaportas*, No. 04-C-436-C, 2005 WL 568041, at *3-4 (W.D. Wis. Mar. 10, 2005).

b. In another instance, a plaintiff obtained a $2 million judgment against Steven Delaportas in Colorado and later attempted to enforce it in Arizona. *See Woodard v. Delportas*, No. CV 08-1093-PHX-MHM, 2008 WL 5082186, at *1-2 (D. Ariz. Nov. 26, 2008). The Court found that the plaintiffs offered compelling evidence that, to avoid the judgment, Steven Delaportas removed himself as a named owner or manager of various companies; caused amendments of ownership to be fraudulently executed in the name of his mother; conspired with others to hide assets through a complex corporate shell game; and engaged in fraudulent conduct. *See id.* at *1-4; *see also Woodard v. Delaportas*, No. 2:07-cv-1377 (D. Ariz. July 9, 2007), ECF No. 146.[1]

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[1] Steven and Jerry Delaportas intentionally change the spellings of their names in order to make it more difficult for business partners to ascertain their identities and to distance themselves from

24. Observance of the corporate form among the TDG Defendants and the Individual Defendants would permit them to perpetuate fraud and injustice and frustrate MSG's efforts to protect its rights.

C. The MIXX Defendants are Successors to, or Alter Egos and Instrumentalities of, the TDG Defendants and the Individual Defendants

25. All of the Defendants have also treated the TDG Defendants and the MIXX Defendants as interchangeable entities.

26. In late 2016 and early 2017, Steven Delaportas and other TDG employees tried to excuse TDG's failure to deliver snack products to MSG by claiming that another company had acquired TDG in October 2016.

27. On information and belief, Steven Delaportas and the TDG employees were referring to the October 2016 purchase of another one of Steven and Jerry Delaportas's companies, Defendant BrandMark, by Defendant Mix 1 Life. As explained below, BrandMark was engaged in precisely the same business as TDG and, on information on belief, was a successor and/or alter ego of the TDG Defendants.

28. When Defendant Mix 1 Life announced its acquisition of BrandMark in October 2016, it stated that BrandMark's "distribution and sales portfolio" included "Jim Beam Snacks," the same product covered by the Agreement between TDG and MSG.

29. In December 2016, Mix 1 Life (not TDG) publicly announced shipments of "Jim Beam Snack" products to convenience stores.

Steven's past fraudulent dealings. The correct spellings are "Steven Delaportas" and "Jerry Delaportas" as reflected in Steven's criminal proceedings and the incorporating documents for the TDG Defendants. However, Steven Delaportas spelled his name "Stephen Dellaportas" in the Agreement and in his communications with MSG. He has also used the pseudonym "Stephan Dellipontas." Similarly, Jerry Delaportas regularly spells his name "Jerry Dellaportas" in public filings and investor materials for the MIXX Defendants.

30. Mix 1 Life represented in a PowerPoint presentation dated November 2016 that it and BrandMark (which were known together as MIXX Brands, Inc.) conducted the same exact business as TDG. For example, the presentation displayed an array of logos for "[c]urrent and past world-class clients within the MIXX brand portfolio" that was virtually identical to the array of logos on the TDG Website—including the logo for Jim Beam. The presentation identified Steven and Jerry Delaportas as officers and/or directors of Mix Life and BrandMark.

31. The Mix 1 Life website, www.mixxbrands.net (the "MIXX Website"), contains videos claiming that the company has a business relationship with Madison Square Garden. Similarly, one of Mix 1 Life's PowerPoint presentations represents that Madison Square Garden is a "Venue Partner" of Mix 1 Life and BrandMark, even though the Agreement was with TDG and not these other companies.

32. Upon information and belief, the MIXX Defendants are alter egos or instrumentalities of the TDG Defendants and/or the Individual Defendants, and/or successors to the TDG Defendants' obligations under the Agreement. On information and belief, the MIXX Defendants and the TDG Defendants have overlapping owners, officers, directors, and employees and have shared office space and/or mailing addresses, and the MIXX, TDG, and Individual Defendants have, as applicable, failed to follow requisite corporate formalities, have intermingled funds, and have financed and/or paid the salaries and other expenses of each other. In addition, the MIXX Defendants hold themselves out as having a contractual relationship with MSG.

D. Defendants' Infringement of MSG S&E's Intellectual Property

a. MSG S&E's Trademarks

33. Plaintiff MSG S&E is the owner of the trademark to the name "Madison Square Garden." For over fifty years, MSG S&E and its predecessors have used this name (the "MSG

Mark") to identify the company (or its predecessors) as the exclusive source of the high quality events, goods, and services hosted at the Madison Square Garden arena and elsewhere.

34. MSG S&E is also the owner of the following design mark for the Madison Square Garden arena (the "MSG Design Mark"):

35. MSG S&E is the owner of the federal registration to the MSG Mark (No. 0835284) and the MSG Design Mark (No. 4532644), the certificates for which are attached here as Exhibit A. The MSG Mark is incontestable under federal law. MSG S&E owns common law rights in both these marks as well.

b. Defendants' Infringement on the TDG Website

36. The TDG Website has displayed a promotional video that infringes the MSG Mark and MSG Design Mark and falsely advertises the TDG Defendants' relationship with Madison Square Garden.

37. The video begins by displaying text against a dramatic nighttime cityscape: "Right now, the world is on the move. Where is your brand?" With upbeat music playing in the background, the video proceeds to show several well-known logos flying toward the viewer, including the Jim Beam logo and the MSG Design Mark.

38. The video then explores several of the brands in sequence. For example, with the Jim Beam logo prominently displayed in the bottom right corner of the screen, the video shows footage of a distillery, of Jim Beam brand nuts, and of a person cooking with a Jim Beam glaze.

39. The end of the video prominently features Madison Square Garden. The video shows an aerial shot of the Garden arena; footage of Muhammad Ali boxing; Garden employees setting up the arena for a Rangers hockey game; the Garden's transformation from hockey stadium to basketball arena; and footage from a Knicks basketball game. Throughout this sequence, the MSG Design Mark is displayed in the bottom right corner of the screen.

40. The video concludes with text that reads: "TDG. Serving Brands Globally."

41. The video's display of the MSG Mark, MSG Design Mark, and images of Madison Square Garden falsely and misleadingly suggests that MSG is a client of the TDG Defendants and has used their brand consulting services. In fact, MSG has never hired any of the TDG Defendants to provide MSG with any branding or consulting services.

42. Plaintiffs did not authorize or approve this infringing video.

43. Upon information and belief, the TDG Defendants jointly operate the TDG website, and the infringing video was posted on that site by or on behalf of the TDG Defendants.

44. Upon information and belief, Defendants Steven Delaportas and Jerry Delaportas controlled the TDG Defendants at all relevant times and directed, authorized, and/or personally effected the creation and publication of the TDG Defendants' false advertising and infringing use of the MSG Mark and MSG Design Mark.

c. Defendants' Infringement on the MIXX Website

45. The MIXX Website has displayed two promotional videos which infringe the MSG Mark and MSG Design Mark and falsely advertise the MIXX Defendants' relationship with Madison Square Garden.

46. The first video, titled "Our Story," is composed nearly entirely of footage from the infringing video on the TDG Website. It displays an aerial shot of the Madison Square

Garden arena, a sequence of photos showing the Garden being transformed from a hockey stadium to a basketball arena, and footage from a Knicks basketball game at the arena, all the while displaying the MSG Design Mark in the bottom right corner of the screen.

47. Like the video on the TDG Website, the "Our Story" video's display of the MSG Design Mark and images of Madison Square Garden falsely and misleadingly suggests that MSG is a client of the MIXX Defendants and has used their services.

48. The second video, titled "Jim Beam Snacks," begins by displaying the MIXX Brands logo, describing the Jim Beam company, and explaining that Jim Beam has expanded from bourbon to snack products such as nuts and seeds. The narrator states that "Jim Beam Snacks can already be found in retailers and venues across the nation. Anywhere from Albertson's, Safeway, Walgreens, Sheetz, 7-Eleven, Walmart, Fenway Park, and Madison Square Garden, just to name a few." When the narrator says the words "Madison Square Garden," the video displays the MSG Mark and an aerial shot of the Garden arena.

49. The video's claim that Jim Beam Snacks can be found at Madison Square Garden is literally false: although MSG ordered Jim Beam products pursuant to the Agreement, TDG never delivered them, and MSG has never sold or otherwise distributed them.

50. Plaintiffs did not authorize or approve these infringing videos.

51. Upon information and belief, the MIXX Website is jointly operated by the MIXX Defendants, and the infringing videos were posted by or on behalf of the MIXX Defendants.

52. Upon information and belief, Defendants Steven Delaportas and Jerry Delaportas controlled the MIXX Defendants at all relevant times and directed, authorized, and/or personally effected the creation and publication of the MIXX Defendants' false advertising and infringing use of the MSG Mark and MSG Design Mark.

COUNT ONE
Breach of Contract

53. Plaintiffs repeat and reallege the allegations above as if fully set forth herein.

54. The TDG Defendants promised in the Agreement to pay sponsorship fees to MSG by specified deadlines. The TDG Defendants further promised to pay interest on any past-due amounts and to reimburse MSG for any costs and expenses, including attorneys' fees, incurred in enforcing the Agreement.

55. MSG was always ready, willing, and able to perform its obligations under the Agreement, and it afforded TDG the sponsorship benefits due TDG under the Agreement, except as excused by law.

56. The TDG Defendants have failed to pay MSG $266,875 in sponsorship fees currently due and owing under the Agreement, or the contractual interest that continues to accrue on this amount.

57. The TDG Defendants also failed to deliver Jim Beam Nuts products ordered by MSG, as required by the Agreement.

58. In addition, the TDG Defendants used the logos and marks of the Madison Square Garden arena in promotional, marketing, and/or advertising material without obtaining MSG's prior approval, and for improper and fraudulent purposes, in violation of the Agreement.

59. Upon information and belief, to the extent that any of the TDG Defendants purports not to be a party to the Agreement, it is an alter ego or instrumentality of the TDG Defendants that are parties to the Agreement and is liable for the breaches identified above.

60. Upon information and belief, the MIXX Defendants are liable for the breaches identified above as successors to and/or alter egos of the TDG Defendants, and because the MIXX Defendants hold themselves out as having a contractual relationship with MSG.

61. Upon information and belief, the Individual Defendants are liable for the breaches above, as the TDG Defendants are their alter egos and/or instrumentalities.

62. As a result of these breaches of the Agreement, MSG has been damaged in an amount to be determined at trial (but no less than $266,875), plus pre-judgment and contractual interest, and attorneys' fees and costs and expenses.

COUNT TWO
Declaratory Judgment
(28 U.S.C. § 2201)

63. Plaintiffs repeat and reallege the allegations above as if fully set forth herein.

64. Defendants have repeatedly failed to pay MSG according to the schedule provided in the Agreement and, upon information and belief, do not intend to make the future payments required by the Agreement on September 1, 2017; March 1, 2018; and September 1, 2018.

65. Accordingly, there is an actual, substantial, and immediate controversy between MSG and Defendants regarding MSG's rights and Defendants' obligations under the Agreement.

66. A declaratory judgment in this action will serve a useful purpose in clarifying and settling the legal relations at issue between MSG and each of the Defendants.

67. A declaratory judgment in this action will terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to this proceeding.

68. Accordingly, MSG is entitled to a declaratory judgment that Defendants are jointly and severally liable to MSG for their contractual obligation to pay $91,875 by September 1, 2017; $96,469 by March 1, 2018; and $96,469 by September 1, 2018.

COUNT THREE
Infringement of Federally Registered Trademarks
(15 U.S.C. § 1114)

69. Plaintiffs repeat and reallege the allegations above as if fully set forth herein.

70. The MSG Mark and MSG Design Mark (collectively, the "Marks") and the goodwill associated with them are of great and incalculable value, are highly distinctive, and have become universally associated in the public mind with MSG S&E's events, goods, and services, which are of the highest quality and reputation.

71. The Marks are covered by federal trademark registrations.

72. Defendants have used the Marks to advertise and promote their products and services in the United States in a manner that has caused and/or has been likely to cause confusion, deception, and mistake as to the affiliation, connection, or association of MSG S&E with Defendants and as to MSG S&E's use, distribution, endorsement, sponsorship, or approval of Defendants' goods, services, or commercial activities, to the damage of MSG S&E's reputation and goodwill.

73. Defendants have used the Marks with knowledge, willful blindness, or reckless disregard of their infringement.

74. Defendants' activities are part of a pattern of repeated misappropriation of the Marks, and upon information and belief, Defendants intend to continue their willfully infringing acts unless restrained by this Court. If these activities are not enjoined, MSG S&E will continue to suffer irreparable harm and injury to its goodwill and reputation.

75. Defendants have caused and will continue to cause injury to the public and to MSG S&E, and MSG S&E is entitled to injunctive relief and to recover treble damages,

Defendants' profits (enhanced pursuant to statute), costs, and reasonable attorneys' fees under 15 U.S.C. §§ 1114, 1116, and 1117.

COUNT FOUR
Federal Trademark Infringement and Unfair Competition
(15 U.S.C. § 1125(a))

76. Plaintiffs repeat and reallege the allegations above as if fully set forth herein.

77. The Marks and the goodwill associated with them are of great and incalculable value, are highly distinctive, and have become universally associated in the public mind with MSG S&E's events, goods, and services, which are of the highest quality and reputation.

78. Defendants have used the Marks to advertise and promote their products and services in the United States in a manner that has caused and/or has been likely to cause confusion, deception, and mistake as to the affiliation, connection, or association of MSG S&E with Defendants and as to MSG S&E's use, distribution, endorsement, sponsorship, or approval of Defendants' goods, services, or commercial activities, to the damage of MSG S&E's reputation and goodwill.

79. Defendants have used the Marks with knowledge, willful blindness, or reckless disregard of their infringement.

80. Defendants' activities are part of a pattern of repeated misappropriation of the Marks, and upon information and belief, Defendants intend to continue their willfully infringing acts unless restrained by this Court. If these activities are not enjoined, MSG S&E will continue to suffer irreparable harm and injury to its goodwill and reputation.

81. Defendants have caused and will continue to cause injury to the public and to MSG S&E, and MSG S&E is entitled to injunctive relief and to recover treble damages,

Defendants' profits (enhanced pursuant to statute), costs, and reasonable attorneys' fees under 15 U.S.C. §§ 1116 and 1117.

COUNT FIVE
False Advertising
(15 U.S.C. § 1125(a))

82. Plaintiffs repeat and reallege the allegations above as if fully set forth herein.

83. With the intent to deceive, Defendants have made and distributed in interstate commerce advertisements that (1) are likely to mislead and cause confusion as to the nature of the relationship between Plaintiffs and Defendants; and (2) contain the literally false representation that Jim Beam Snacks can be found at Madison Square Garden.

84. These misrepresentations and falsehoods are material and have caused injury to Plaintiffs' reputation and goodwill.

85. The aforesaid acts of Defendants constitute false advertisement in violation of § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

86. Upon information and belief, by their acts, Defendants have made and will make substantial profits and gains to which they are not in law or equity entitled.

87. Upon information and belief, as a direct and proximate result of Defendants' acts, Plaintiffs have suffered actual damages in an amount to be proven at trial.

88. Upon information and belief, Defendants' conduct was undertaken willfully and with the intention of causing confusion, mistake, or deception, making this an exceptional case under 15 U.S.C. § 1117.

89. Plaintiffs are entitled to injunctive relief and to recover treble damages, Defendants' profits (enhanced pursuant to statute), costs, and reasonable attorneys' fees under 15 U.S.C. §§ 1116 and 1117.

COUNT SIX
Federal Trademark Dilution
(15 U.S.C. § 1125(c))

90. Plaintiffs repeat and reallege the allegations above as if fully set forth herein.

91. MSG S&E's registered Marks are famous throughout the United States and have been famous for many years, including many years prior to any use by Defendants.

92. By their improper use of these famous Marks, Defendants have blurred and/or tarnished the Marks and therefore have diluted them.

93. Defendants have used the Marks with knowledge, willful blindness, or reckless disregard of their dilution of the Marks.

94. Defendants' activities are part of a pattern of repeated misappropriation of the Marks, and upon information and belief, Defendants intend to continue their willfully infringing acts unless restrained by this Court. If these activities are not enjoined, MSG S&E will suffer irreparable harm and injury to its goodwill and reputation.

95. Defendants' conduct has caused and will continue to cause injury to the public and to MSG S&E, and MSG S&E is entitled to injunctive relief and to recover treble damages, Defendants' profits (enhanced pursuant to statute), costs, and reasonable attorneys' fees under 15 U.S.C. §§ 1116, 1117, and 1125(c)(5).

COUNT SEVEN
Common Law Trademark Infringement

96. Plaintiffs repeat and reallege the allegations above as if fully set forth herein.

97. MSG S&E owns all rights, title, and interest in and to the Marks as aforesaid, including all common law rights in such Marks.

98. The aforesaid acts of Defendants constitute trademark infringement in violation of the common law of the State of New York.

99. Upon information and belief, by their acts, Defendants have made and will make substantial profits and gains to which they are not in law or equity entitled.

100. Upon information and belief, Defendants intend to continue their willfully infringing acts unless restrained by this Court.

101. Defendants' acts have damaged and will continue to damage MSG S&E.

102. Defendants have engaged in this activity willfully and wantonly with morally culpable behavior, so as to justify the assessment of punitive damages against them, in an amount to be determined at trial.

COUNT EIGHT
Common Law Unfair Competition

103. Plaintiffs repeat and reallege the allegations above as if fully set forth herein.

104. The aforesaid acts of Defendants constitute unfair competition in violation of the common law of the State of New York.

105. Upon information and belief, by their acts, Defendants have made and will make substantial profits and gains to which it is not in law or equity entitled.

106. Upon information and belief, Defendants intend to continue their willfully infringing acts unless restrained by this Court.

107. Defendants' acts have damaged and will continue to damage MSG S&E.

108. Defendants have engaged in this activity willfully and wantonly with morally culpable behavior, so as to justify the assessment of punitive damages against them, in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that the Court enter judgment in their favor and against Defendants:

A. Awarding Plaintiffs monetary damages, including pre-judgment and contractual interest;

B. Declaring that Defendants are jointly and severally liable to MSG for their contractual obligation to pay $91,875 by September 1, 2017; $96,469 by March 1, 2018; and $96,469 by September 1, 2018;

C. Awarding Plaintiffs treble damages and an enhanced measure of Defendants' profits pursuant to 15 U.S.C. § 1117, as a result of Defendants' willful and intentional violations of the Lanham Act;

D. Awarding Plaintiffs their costs and expenses, including attorneys' fees;

E. Awarding MSG S&E exemplary and punitive damages;

F. Enjoining Defendants, their officers, agents, employees, and all persons acting for, with, by, through, or under them from using the Marks, whether in whole or in part, whether or not in connection with any additional element, in any manner in the United States, as MSG S&E has no adequate remedy at law for its injuries;

G. Ordering Defendants to correct any erroneous impression persons may have derived concerning the relationship between themselves and Plaintiffs, including without limitation the placement of corrective advertising and providing written notice to the public; and

H. Awarding Plaintiffs such other and further relief as the Court deems just and proper, including pursuant to 28 U.S.C. § 2202.

JURY DEMAND

Plaintiffs demand a trial by jury.

Dated: New York, New York
May 18, 2017

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